

## FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

March 1, 2005

William T. Newborg  
Vice President/GM  
First Commonwealth Cablevision, Ltd.  
Post Office Box 1147  
Saluda, Virginia 23149

Re: First Commonwealth Cablevision, Ltd.  
FY 2003 Regulatory Fee Penalty  
FY 2004 Regulatory Fee Penalty  
Fee Control No. 00000RROG-05-026

Dear Mr. Newborg:

This is in response to your request dated September 14, 2004, filed on behalf of First Commonwealth Cablevision, Ltd. (First Commonwealth). You argue, first, that the Office of Managing Director (OMD) erred in denying First Commonwealth a waiver of the \$851.46 penalty for late payment of the fiscal year (FY) 2003 regulatory fee.<sup>1</sup> You also request that OMD waive the penalty for late payment of the FY 2004 regulatory fee. Our records reflect that First Commonwealth paid the \$851.46 late payment penalty for FY 2003 and the \$837.00 late payment penalty for FY 2004.

With respect to FY 2003, in your initial waiver request, you stated that First Commonwealth mailed its FY 2003 regulatory fee payment on September 19, 2003, well in advance of the September 25, 2003 filing deadline, but that you believed that the Commission's receipt of the payment was delayed due to power outages and other infrastructure damage in the area caused by Hurricane Isabel the day before. You stated that First Commonwealth mailed its check even though its office was operating on minimal backup power for nine days following the hurricane and employees were working extended hours to restore services to customers.

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<sup>1</sup> See Letter from Mark A. Reger, Chief Financial Officer CFO), OMD, to William T. Newborg (dated May 10, 2004) (*May 10 Letter*); Letter from Mark A. Reger, CFO, OMD, to William T. Newborg (dated Aug. 11, 2004) (*August 11 Letter*) (denying petition for reconsideration of *May 10 Letter*).

In the *May 10 Letter*, OMD denied First Commonwealth's request for a waiver of the late payment penalty. OMD explained that the Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner. OMD stated that it is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. OMD found that First Commonwealth's request did not indicate or substantiate that it met this obligation.<sup>2</sup> OMD therefore denied First Commonwealth's waiver request and stated that the \$851.46 penalty should be submitted within 30 days of the date of the letter. First Commonwealth paid the late charge penalty.

In your petition for reconsideration of the *May 10 Letter*, you raised the same arguments in support of First Commonwealth's request for waiver of the late charge penalty for late payment of the FY 2003 regulatory fees that you raised in your initial waiver request. We found in the *August 11 Letter* that OMD's decision in the *May 10 Letter* denying First Commonwealth's waiver request was correct and that you provided no additional justification for a reversal of that decision. Citing section 1.106 of the Commission's rules, 47 C.F.R. §1.106, and *McLeodUSA Telecommunications Services, Inc.*, 19 FCC Rcd 6587, paras. 7-8 (2004), we denied your request for reconsideration with respect to waiver of the penalty.

In the instant request pertaining to FY 2003,<sup>3</sup> you assert that "[t]he entire area had been hit by Hurricane Isabel[.]" Noting that First Commonwealth is an independent entity with less than 5,000 subscribers, you aver that "we do not have the corporate infrastructure . . . to insure that the mail service gets the FCC their check" and First Commonwealth "used the local post office. . . [which was] also under the identical strain in trying to operate under these conditions." You state that "we were pleased to see your consideration for extenuating circumstances for Hurricane Charley this year"<sup>4</sup> and ask "[h]ow is this different from Hurricane Isabel [in 2003]?"

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<sup>2</sup> OMD also noted that section 1.1158 of the Commission's rules, 47 C.F.R. §1.1158, permits payment of regulatory fees by means other than mailing, such as electronic transfer.

<sup>3</sup> This request is in the nature of a further petition for reconsideration of denial of your initial request for reconsideration and, as such, may be dismissed as repetitious. See 47 C.F.R. §1.106(k)(3). Any such further request will be dismissed forthwith.

<sup>4</sup> See Public Notice, *Deadline for Filing FY 2004 Regulatory Fees*, DA 04-2549 (rel. Aug. 18, 2004) (reminding applicants of the August 19, 2004 deadline for filing FY 2004 regulatory fees and stating that "[e]ntities and individuals located in the areas impacted by the effects of Hurricane Charley . . . may file requests for waivers [along with the required supporting documentation] of any late penalty due to the effects of the hurricane on power outages, closed businesses and the mail system.").

As the Commission stated in *Aerco Broadcasting Corp.*, 16 FCC Rcd 15042, 15043 (2001), and as we indicated in the *May 10 Letter*, section 1.1158 of the Commission's rules

permits payment of regulatory fees in forms that would not be affected by extrinsic factors, such as the uncertainties associated with the timing of mail delivery or the possibility of approaching weather conditions that might slow delivery. [Footnote omitted.] The rules allow electronic transfer of funds, thus providing greater certainty of timely delivery. This permits licensees to account for individual circumstances in choosing how to meet their obligations to make payment in a timely manner.

Because the Commission's rules permit payment of regulatory fees by methods other than mailing, including accessible methods such as electronic transfer,<sup>5</sup> your statement that First Commonwealth does not have "the corporate infrastructure" to guarantee timely delivery of the FY 2003 fee fails to establish the extraordinary circumstances that would justify a waiver of the penalty for late payment of the FY 2003 regulatory fee. Further, contrary to your suggestion that the Commission did not provide "consideration for extenuating circumstances" related to Hurricane Isabel in 2003, we note that because the Washington, D.C. metropolitan area experienced power outages in the wake of Hurricane Isabel, the Commission provided regulatory filing relief to all regulatees by extending the deadline date for filing FY 2003 regulatory fees from September 24, 2003 to September 25, 2003.<sup>6</sup> We therefore deny your request to waive the penalty with respect to FY 2003.

With respect to your request for waiver of the late charge penalty for FY 2004, you claim that the filing date for the FY 2004 regulatory fee was "arbitrarily changed" "from the usual annual due date of September 24<sup>th</sup> to August 19<sup>th</sup> [.]". Stating that "[w]e cannot find where we were sent notification of the due date change[.]" you ask "[w]here did that [change] come from and how would we have been notified of this change?" Asserting that First Commonwealth is "a small operator in a rural market[.]" you maintain that "competition is extremely tough" and that "we are up against the wall[.]".

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The Commission takes great care to inform its licensees of the due dates, amounts of the fees, and payment methods on its web site, [www.fcc.gov](http://www.fcc.gov). For the FY 2004 regulatory fees, the Commission timely released and posted several public notices and news releases on its web site that informed licensees of the August 19, 2004 deadline.<sup>7</sup>

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<sup>5</sup> Additional information regarding payment by electronic transfer can be found at <http://www.fcc.gov/fees/electran.html>.

<sup>6</sup> See Public Notice, *Federal Communications Commission Extends the Filing Deadline Date of FY Regulatory Fee*, 19 FCC Rcd 18748 (rel. Sept. 22, 2003).

<sup>7</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order*, 19 FCC Rcd 11662 (2004) (*FY 2004 Fee Order*); Public Notice, *FY 2004 Regulatory Fees Due No Later Than August 19, 2004*, (July 2, 2004); FCC News, *Official FY 2004 Regulatory Fee Payment Window Opens Tomorrow - Fees Due No*

William T. Newborg, Vice President/GM

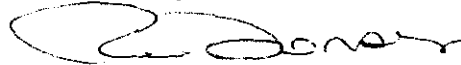
4.

As a Commission licensee, First Commonwealth is charged with the responsibility to familiarize itself with the Commission's rules and requirements. As explained in the *FY 2004 Fee Order*, the Commission no longer disseminates public notices through surface mail. As indicated above, these notices are routinely posted on the Commission's website. Therefore, First Commonwealth's lack of familiarity with the Commission's rules governing and public notices concerning regulatory fee payments does not mitigate or excuse First Commonwealth's failure to pay its FY 2004 regulatory fee in a timely manner. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>8</sup> Furthermore, as noted above, the Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. 47 U.S.C. §159(c).

We find that First Commonwealth did not meet its obligation to file its FY 2004 regulatory fee to be received by the Commission no later than August 19, 2004, the final date of the regulatory fee filing window for FY 2004. We therefore deny your request for waiver of the penalty for late payment of the fiscal year 2004 regulatory fee.

In summary, we deny your requests for waiver of the late payment penalty with respect to FY 2003 and FY 2004. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger  
Chief Financial Officer

Enclosure

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*Later Than August 19* (Aug. 9, 2004) (reminding of deadline and stating that Commission would begin aggressive effort to collect fees, including 25 percent penalty, beginning August 20, 2004); Public Notice, *Deadline for Filing FY 2004 Regulatory Fees*, DA 04-2549 (Aug. 18, 2004).

<sup>8</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

AR012-A  
2/07/2005  
15:18:21

RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1  
2/07/2005  
15:18:21

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560553	9/17/02	0209178835258004	0005013909	First Commonwealth Cablevision	9/16/02	\$2,659.88
Seq: 1 Call Sign: VA0341 FCC Code 1: FCC Code 2: MIDDLESEX Tin Number: 0541151634						
PTC: 0271 QTY: 2411 Applied Amt: 1277.83 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 3 Call Sign: VA0295 FCC Code 1: FCC Code 2: KILMARNOCK Tin Number: 0541151634						
PTC: 0271 QTY: 579 Applied Amt: 306.87 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 4 Call Sign: VA0298 FCC Code 1: FCC Code 2: IRVINGTON Tin Number: 0541151634						
PTC: 0271 QTY: 216 Applied Amt: 114.48 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 6 Call Sign: VA0330 FCC Code 1: FCC Code 2: LANCASTER Tin Number: 0541151634						
PTC: 0271 QTY: 1066 Applied Amt: 564.98 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 7 Call Sign: WHZ828 FCC Code 1: FCC Code 2: Tin Number: 0541151634						
PTC: 0270 QTY: 1 Applied Amt: 65.00 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 2 Call Sign: VA0342 FCC Code 1: FCC Code 2: URBANNA Tin Number: 0541151634						
PTC: 0271 QTY: 306 Applied Amt: 162.18 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						
Seq: 5 Call Sign: VA0299 FCC Code 1: FCC Code 2: WHITESTONE Tin Number: 0541151634						
PTC: 0271 QTY: 318 Applied Amt: 168.54 Held for Credit: \$0.00 Refund Amount: \$0.00						
Applicant Name: FIRST COMMONWEALTH CABLEVISION						
Address: PO BOX 1147						

AR012-A  
2/07/2005  
15:18:21

RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

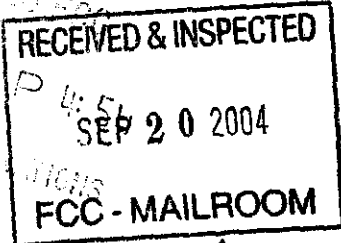
PAGE 2  
2/07/2005  
15:18:21

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560820	10/07/03	0310078835154006	0005013909	First Commonwealth Cablevision	10/06/03	\$3,405.84
PTC: 0371 Seq: 1 Call Sign: VA0341 FCC Code 1: FCC Code 2: MIDDLESEX Tin Number: \$0.00 QTY: 2511 Applied Amt: 1657.26 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0371 Seq: 2 Call Sign: VA0342 FCC Code 1: FCC Code 2: URBANNA Tin Number: \$0.00 QTY: 320 Applied Amt: 211.20 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0371 Seq: 3 Call Sign: VA0295 FCC Code 1: FCC Code 2: KILMARNOCK Tin Number: \$0.00 QTY: 592 Applied Amt: 390.72 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0371 Seq: 4 Call Sign: VA0298 FCC Code 1: FCC Code 2: IRVINGTON Tin Number: \$0.00 QTY: 213 Applied Amt: 140.58 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0371 Seq: 5 Call Sign: VA0299 FCC Code 1: FCC Code 2: WHITESTONE Tin Number: \$0.00 QTY: 332 Applied Amt: 219.12 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0371 Seq: 6 Call Sign: VA0330 FCC Code 1: FCC Code 2: LANCASTER Tin Number: \$0.00 QTY: 1056 Applied Amt: 696.96 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
PTC: 0370 Seq: 7 Call Sign: WH2828 FCC Code 1: FCC Code 2: Tin Number: \$0.00 QTY: 1 Applied Amt: 90.00 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
560953	4/06/04	0404068205403003	0005013909	First Commonwealth Cablevision	4/05/04	\$220.00
PTC: TIC Seq: 1 Call Sign: WH2828 FCC Code 1: FCC Code 2: Tin Number: \$0.00 QTY: 1 Applied Amt: 220.00 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: FIRST COMMONWEALTH CABLEVISION Address: PO BOX 1147						
561021	6/23/04	0406238340407001A	0005013909	First Commonwealth Cablevision	7/13/04	\$851.46
Billing No. 0420000441 Seq: 1 Call Sign: FCC Code 1: FCC Code 2: Tin Number: \$0.00 PTC: 0399 QTY: 1 Applied Amt: 851.46 Held for Credit: \$0.00 Refund Amount: \$0.00 Applicant Name: Address:						



# CABLE VISION

The Sight ● The Sound ● The Future  
P.O. Box 1147 Saluda, Virginia 23149



September 14, 2004

Mr. Mark A. Reger  
Chief Financial Officer  
Federal Communications Commission  
Office of Managing Director  
Washington, D.C. 20554

*2 dy letter  
Assign Regina - See Me  
30 dy*

**RE: (1) First Commonwealth Cablevision, Ltd. FY 2003 Regulatory Late Charge  
Penalty Fee Control No. 00000RROG-04-061.  
(2) FY 2004 Regulatory Fee Filing Date Change**

Dear Sir:

I am writing to you again for two reasons. First, I recently received your August 11, 2004 letter denying our request for a waiver of the late fee paid for FY 2003. We never questioned the legitimacy of the FCC's authority to charge the fee, only that there were extenuating circumstances beyond our control that impacted the payment getting to the FCC on time.

It remains our opinion that we did in fact supply you with more than adequate information to justify the waiver. The entire area had been hit by Hurricane Isabel (newspaper headlines filled with stories accompanied our original request) and since we are an independent operator with less than 5,000 subscribers, we were intent on getting our services back on to the best of our ability. We do not have the corporate infrastructure located elsewhere to insure that the mail service gets the FCC their check. We used the local post office. They were also under the identical strain in trying to operate under these conditions.

The second reason for this letter is a little like pouring salt in the wound. Since this second denial of our request for waiver, the filing date for FY 2004 Regulatory Fees was changed from the usual annual due date of September 24<sup>th</sup> to August 19<sup>th</sup> this year.

Where did that come from and how would we have been notified of this change? We found out, after the fact, because we needed the form to remit our fees for 2004 and went online to pull down the form. We were astounded to see that the date had been arbitrarily changed to August 19<sup>th</sup> for this year. Despite this startling bit of news, I must say that we

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September 14, 2004

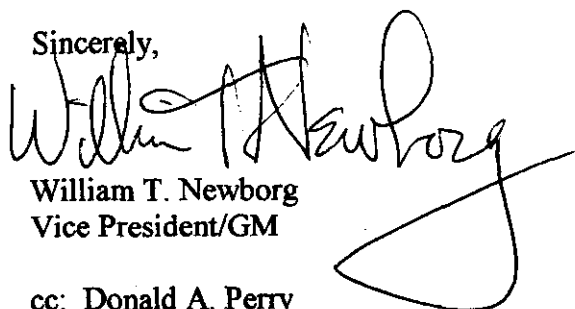
were pleased to see your consideration for extenuating circumstances for Hurricane Charley this year. How is this different from Hurricane Isabel?

We are a small operator in a rural market. Competition is extremely tough since the satellite companies blanket the area with national offers targeted specifically against the cable operator. We feel like we are fighting competition and bureaucracy.

While an \$851.46 late charge fee may not seem like much, we could use the relief for FY 2003 and it looks like we are up against the wall again for FY 2004. We cannot find where we were sent notification of the due date change. Our mistake was that we assumed the filing date would remain the same that it has been in previous years.

A timely response would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "William T. Newborg". The signature is fluid and cursive, with a large loop at the end.

William T. Newborg  
Vice President/GM

cc: Donald A. Perry  
President

WTN/rm

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[Close Window](#)

**Registration Details**

**FRN:** 0005013909

**Registration Date:** 09/19/2001 10:56:08 AM

**Last Updated:** 10/17/2003 03:21:01 PM

**Business Name:** First Commonwealth Cablevision, Ltd.

**Business Type:** Private Sector, Corporation

**Contact Organization:** First Commonwealth Cablevision, Ltd.

**Contact Position:** MGR

**Contact Name:** Ms. Rebecca Marshal

**Contact Address:** 126 Urbanna Road  
P.O. Box 1147  
Saluda, VIRGINIA 23149-1147  
United States

**Contact Email:**

**Contact Phone:** (804) 758-5870

**Contact Fax:** (804) 758-4714

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